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OFFICE OF THE CLERK

IN THE SUPREME COURT OF THE UNITED STATES

MERRY MORRIS,

PETITIONER,

VS.

ART WROBLE AND W. MATTHEW STEVENSON,

RESPONDENTS.

ON PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES ELEVENTH CIRCUIT COURT OF APPEALS

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

The Eleventh Circuit has entered an order affirming the District Court's dismissal of Petitioner's declaratory judgment action by invoking the so-called *Rooker-Feldman* doctrine. Accordingly, presented for review is:

WHETHER the inferior courts are still applying the *Rooker-Feldman* doctrine "far beyond the contours of the *Rooker* and *Feldman* cases";

WHETHER subject matter jurisdiction resides in the federal district courts to determine state court breaches of fundamental and federal constitutional rights of parents; and

WHETHER subject matter jurisdiction resides in the federal district courts to determine state court breaches of fundamental and federal constitutional rights to access court.

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PETITION FOR WRIT OF CERTIORARI TO THE ELEVENTH CIRCUIT COURT OF APPEALS

Petitioner, Merry Morris, prays that a writ of certiorari issue to review the judgment and opinion of the Eleventh Circuit entered on November 16, 2006.

Review is appropriate as the Eleventh Circuit has decided an important federal question in a way that conflicts with relevant decisions of this Court.

OPINIONS BELOW

The June 1, 2006, order of dismissal of the United States District Court for the Southern District of Florida is reprinted in the Appendix hereto *Appendix -2.*

The November 16, 2006, order of the United States Circuit Court affirming the District Court's decision is reprinted in the Appendix hereto, *Appendix-9.*

JURISDICTION

The jurisdiction of this Court is invoked under Article III and the Ninth Amendment to the United States Constitution and 28 U.S.C. §1254(1).

CONSTITUTIONAL PROVISIONS, TREATIES, STATUTES, ORDINANCES AND REGULATIONS INVOLVED

U.S. CONSTITUTION ARTICLE III, § 2

The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority;--to all cases affecting ambassadors, other public ministers and consuls;--to all cases of admiralty and maritime jurisdiction;--to

controversies to which the United States shall be a party;--to controversies between two or more states; – between a state and citizens of another state; – between citizens of different states; – between citizens of the same state claiming lands under grants of different states, and between a state, or the citizens thereof, and foreign states, citizens or subjects.

In all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be party, the Supreme Court shall have original jurisdiction. In all the other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations as the Congress shall make.

RULES ENABLING ACT, 28 U.S.C. §2071(A)

The Supreme Court and all courts established by Act of Congress may from time to time prescribe rules for the conduct of their business. Such rules shall be consistent with Acts of Congress and rules of practice and procedure prescribed under section 2072 of this title.

RULES ENABLING ACT, 28 U.S.C. §2072(B)

Such rules shall not abridge, enlarge or modify any substantive right.

ORIGINAL JURISDICTION, 28 U.S.C. §1251

(a) The Supreme Court shall have original and exclusive jurisdiction of all controversies between two or more States.

(b) The Supreme Court shall have original but not exclusive jurisdiction of:

(1) All actions or proceedings to which ambassadors, other public ministers, consuls,

or vice consuls of foreign states are parties;

(2) All controversies between the United States and a State;

(3) All actions or proceedings by a State against the citizens of another State or against aliens.

STATE COURTS; CERTIORARI, 28 U.S.C. §1257

(a) Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.

CIVIL ACTION FOR DEPRIVATION OF RIGHTS, 42 U.S.C. §1983

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable.

STATEMENT OF THE CASE

In 1998 - after nearly 11 years of marriage – Petitioner and her then-husband Leland Morris ("Husband") executed a Post-Nuptial Agreement. That Agreement – among other terms – provided for joint, rotating custody of the couple's two children.

Significant to these proceedings, the Agreement also contained certain "challenge" language which stated in pertinent part:

> In the event that . . . after entry of judgment [Petitioner] challenges in court any provision in this agreement, the additional consideration paid to [Petitioner] by [the Husband] to obtain this agreement, as described in paragraph 22 above, shall be forfeited by [the Wife] and if already paid to [the Wife], [the Husband] shall retain all rights at law and equity to seek its return.

On June 27, 2003, Petitioner – acting in her opinion in the best interest of her children – filed her "Motion for Enforcement of the Post-Nuptial Agreements and Sanctions for Husband's Violation of the material terms regarding Child Visitation and for Parental Alienation" in Palm Beach County, Florida Circuit Court. In paragraphs 5 and 12 of her "Motion for Enforcement", Petitioner stated unequivocally that she was "not challenging any provision of the Post-Nuptial Agreements" and "[sought] only to enforce and supplement the timesharing provisions in Post-Nuptial Agreement."

In response to the Petitioner's Motion, the Husband filed a counterclaim characterizing the Petitioner action as a "challenge" that warranted her forfeiture of $1.5 million under the Post-Nuptial Agreement.

After a three-day trial, the Florida Family Court judge denied Petitioner's Motion for Enforcement, concluding that although the Petitioner had "some legitimate gripes", the Husband had not violated the timesharing provisions of the Post-Nuptial Agreement.

As to the Husband's counterclaim seeking forfeiture by the Petitioner for "challenging" the Post-Nuptial Agreement, the Florida Family Court judge concluded that despite the Petitioner's full compliance with her obligations under the "challenge" clause, her efforts to modify the timesharing provisions two years later constituted a "challenge" to the Agreement which triggered a forfeiture. The Florida Family Court judge entered judgment against Petitioner for $1.5 million under the "challenge" clause and additionally awarded over $264,000 to the Husband for his prevailing party attorney's fees and costs.

The Petitioner timely perfected a plenary appeal from the amended judgment to the Respondent Florida Fourth District Court of Appeal which appeal was assigned Case No.: 4D04-3812.

Immediately after the entry of the judgment, the Husband sought proceedings supplementary, an asset injunction, and an order requiring the Petitioner to pay the judgment in full. The Florida Family Court judge on November 4th, 2004, entered an order which froze the Petitioner's assets, required her to pay the amount of the judgment with accrued interest totaling $1,803,859.61 by November 12th, 2004, and warned that her failure to comply with that directive would expose her to contempt proceedings. The Petitioner timely appealed that order to the Respondent Fourth District Court of Appeal which appeal was assigned Case No. 4D04-4621.

In the meantime, the Husband moved for contempt and sanctions directed to the Petitioner's anticipated failure to pay the judgment, appear for her deposition, and produce all

documents requested of her in aid of execution. The Florida Family Court judge adjudicated Petitioner in contempt for the discovery-related issues on November 15, 2004, and required her to purge the contempt by appearing for her deposition by November 18, 2004, and producing all documents previously requested in aid of execution.

Thereafter, on November 17, 2004, the Florida Family Court judge adjudicated Petitioner in contempt for failure to pay the judgment and required her to purge that contempt by November 29, 2004, either by (i) paying the $1,803,850.61 judgment with accrued interest, (ii) in lieu of payment, posting a supersedeas bond to secure that amount, or (iii) executing written authorizations "which are legally sufficient" to enable the financial institutions holding her funds to transfer an amount sufficient to pay the judgment to the Husband's lawyer's trust account. The contempt orders threatened the Petitioner with a show cause hearing and sanctions, including incarceration, for failing to purge her contempt.

A show cause hearing followed on November 29, 2004. Threatened with indefinite incarceration as she no longer had control over her funds as they had pre-trial been placed in an *irrevocable* Cook Island, Australia Trust – the terms of which prohibited disbursement to satisfy judgments – the Petitioner did not appear at the hearing and the Florida Family Court judge reached the conclusion that the Petitioner had willfully failed to appear at her deposition and produce discovery documents. Finding the acts to be contemptuous, the Florida Family Court judge issued two Orders of Commitment directed to Petitioner on November 29, 2004 and corrected versions thereof on December 1, 2004.

Reinstating the "debtor's prison", the first corrected commitment order of December 1, 2004, addressing the Petitioner's failure to pay the outstanding money judgment directed that the Petitioner be incarcerated until she either paid

the judgment or exercised one of the options offered in lieu of paying the judgment. The corrected commitment order also addressed the discovery-related issues directed that the Petitioner be incarcerated until she: (1) was deposed in custody; and (2) complied with the outstanding discovery requests in aid of execution.

The Petitioner timely appealed from the commitment orders to the Respondent Fourth District Court of Appeal which appeal was assigned Case No. 4D04-4763.

The Husband moved to dismiss all three appeals (4D04-3821, 4D04-4621, 4D04-4763) based on the Petitioner's failure to purge her contempt and Florida case law as articulated in *Gazil v. Gazil*, 343 So. 2d 595 (Fla. 1977)[1]. Petitioner objected, arguing that the Respondent Fourth District Court of Appeal had no authority to dismiss her appeals based (i) on her failure to obey void contempt orders purporting to enforce an underlying judgment which was patently void against public policy and (ii) on her inability in all events to comply with the Florida Family Court's orders.

Rejecting the Petitioner's position, the Respondent Fourth District Court of Appeal summarily dismissed the appeals in Case Nos.:4D04-3812 and 4D04-4621 on March 18, 2005, but stayed its order for fifteen days "to allow Petitioner to submit to body attachment order, ending her fugitive status." On April 4, 2005,

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[1] In *Gazil*, the Florida Supreme Court held: "From these decisions it appears the rule in Florida is as follows: Where the appellant has disobeyed an order of the trial court, the appellate court may, in its discretion, either entertain or dismiss an appeal. However, where a dismissal is ordered it is mandatory that the disobedient appellant must be given a period of grace, prior to the effective date of the dismissal, in which to comply with the disobeyed order." *Gazil* at 597.

Respondent Fourth District Court of Appeal entered an identical order dismissing the appeal of the commitment orders in Case No. 4D04-4763.

Rather than seeking a petition for certiorari of the orders of dismissal as the appellant in *Gazil*, on July 5, 2005, Petitioner filed a Petition for Mandamus with the Florida Supreme Court seeking a writ of Mandamus directing the Respondent Fourth District Court of Appeal to reinstate appeals 4D04-3821, 4D04-4621, 4D04-4763 and provide the constitutionally guaranteed appellate review of those orders on their merits.

On July 11, 2005, the Florida Supreme Court issued a stay of the November 29, 2004, and December 1, 2004, commitment orders. Almost one year later, on April 13, 2006, in a four to three decision, the Florida Supreme Court ruled solely that mandamus was not warranted holding that:

> As petitioner has failed to demonstrate a clear legal right to have the Fourth District Court of Appeal reinstate her appeal, the petition for writ of mandamus is denied. See *Huffman v. State*, 813 So. 2d 10, 11 (Fla. 2000) (holding that in order to be entitled to a writ of mandamus, the petitioner must show that he has a clear legal right to performance of the requested act, that the respondent has an indisputable legal duty to perform that act, and that no other adequate remedy exists)."

Significantly, Justice Anstead, joined by Chief Justice Pariente and Justice Quince, recognizing the substantial miscarriage of justice wrote a dissenting opinion which held in pertinent part:

> However, because her appeals have been dismissed based upon her continuing failure to

> satisfy the alleged void judgment and contempt sanctions arising out of the judgment, **no appellate review of the merits of her claims have been made or will be made. Hence, no determination has been or will be made as to whether the judgment is void as against Florida public policy because it enforces a forfeiture clause barring the wife from seeking any change in the visitation provisions of a post-nuptial agreement.** Because it appears that **substantial questions exist as to the validity of the no-contest provisions of the post-nuptial agreement and the forfeiture judgment and contempt proceedings based on the former wife's alleged violations of these provisions,** I would grant relief and order reinstatement of the appeals." (Emphasis added).

On April 22, 2006, Petitioner file a petition for rehearing with the Florida Supreme Court which was denied on June 15, 2006.[2]

On May 5, 2006, Petitioner filed her complaint in federal district court against the Respondents in their official capacities pursuant to 42 U.S.C. §1983 seeking a declaratory judgment that: (1) a Florida state-court trial judge may not enforce a post-nuptial agreement that by its terms prohibits upon pain of

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[2] Petitioner also sought a stay from this Court in Case Number 06A19 which was denied. As a result, Petitioner has seen neither her daughter who is 13 and is in 8th grade nor her son who is 16 and in the10th grade for over two years denying both her and them maternal affection and direction all for the sake of the Husband's lust for money and the Florida Court system's elevation of form over substance.

forfeiture any access to court for child custody and visitation issues as violating federal and Florida constitutional rights; and (2) the Florida Fourth District Court of Appeal may not refuse to hear an appeal challenging, on public policy grounds, the federal and Florida constitutional rights of a parent. The district court granted the defendant judges' motion to dismiss under the *Rooker-Feldman* doctrine. Petitioner timely appealed.

On November 16, 2006, in a "Do Not Publish" *per curiam* opinion, the Eleventh Circuit affirmed the District Court's dismissal under the *Rooker-Feldman* doctrine.

This timely Petition followed.

REASONS FOR GRANTING THE WRIT

By its holding, the Eleventh Circuit is continuing to improperly limit federal district court jurisdiction in a manner which "extend[s] far beyond the contours of the *Rooker* and *Feldman* cases" and "overrid[es] Congress' conferral of federal court jurisdiction concurrent with jurisdiction exercised by state courts, and superseding the ordinary application of preclusion law pursuant to 28 U. S. C. §1738." For this Court do deny this Petition would be an abdication of its responsibilities "to ensure that these local rules are consistent with 'the principles of right and justice.'" *Frazier v. Heebe*, 482 U.S. 641, 645 (1987).

If access to federal court to seek protection from encroachment by states on fundamental and federal rights is to be preserved, this Court must act to stop the inferior courts from ignoring the plain obligation placed upon them by the express conferral by Congressional of subject matter jurisdiction. Otherwise, the quoted language above from *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S.280 (2005) will be recognized only in the breach and the denial of access to federal court will continue "far beyond the contours of the *Rooker* and *Feldman* cases".

I. *ROOKER-FELDMAN* HAS BEEN INTERRED

On May 1, 2006, in *Marshall v. Marshall*, 04-1544, this Court decided this celebrated case involving Vickie Lynn Marshall a.k.a. Anna Nicole Smith, the surviving widow of J. Howard Marshall II. In his concurrence, Justice Stevens noted, " I would provide the creature with a decent burial in a grave adjacent to the resting place of the *Rooker-Feldman* doctrine. See *Lance v. Dennis*, 546 U. S. ___, ___ (2006).

The unanimous decision by this Court in *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S.280, 283 (2005) commenced with the express finding that:

> This case concerns what has come to be known as the *Rooker-Feldman* doctrine, applied by this Court only twice, first in *Rooker v. Fidelity Trust Co.*, 263 U. S. 413 (1923), then, 60 years later, in *District of Columbia Court of Appeals v. Feldman*, 460 U. S. 462 (1983). Variously interpreted in the lower courts, **the doctrine has sometimes been construed to extend far beyond the contours of the *Rooker* and *Feldman* cases**, overriding Congress' conferral of federal court jurisdiction concurrent with jurisdiction exercised by state courts, and superseding the ordinary application of preclusion law pursuant to 28 U. S. C. §1738. (Emphasis added).

In determining that the so-called *Rooker-Feldman* doctrine did not bar suit in *Exxon Mobil Corp.*, this Court held: "Nor does §1257 stop a district court from exercising subject-matter jurisdiction simply because a party attempts to litigate in federal court a matter previously litigated in state court. If a federal plaintiff 'present[s] some independent claim, albeit one that denies a legal conclusion that a state court has reached in a case

to which he was a party . . ., **then there is jurisdiction and state law determines whether the Appellee prevails under principles of preclusion.**'". (Emphasis added).

Here, as Justice Ginsburg – notably on behalf of the entire Court – Petitioner's case does not "exhibit the limited circumstances in which [the Supreme] Court's appellate jurisdiction over state-court judgments, 28 U. S. C. §1257, precludes a United States district court from exercising subject-matter jurisdiction in an action it would otherwise be empowered to adjudicate under a congressional grant of authority, *e.g.*, §1330 (suits against foreign states), §1331 (federal question), and §1332 (diversity)." *ExxonMobil* at 291.

Indeed, as expressly recognized in *ExxonMobil*, jurisdiction in the District Court is not barred by §1257. "Nor does §1257 stop a district court from exercising subject-matter jurisdiction simply because a party attempts to litigate in federal court a matter previously litigated in state court. If a federal Petitioner 'present[s] some independent claim, albeit one that denies a legal conclusion that a state court has reached in a case to which he was a party . . ., then there is jurisdiction and state law determines whether the defendant prevails under principles of preclusion.'" *ExxonMobil* at 293.

Any other result than to recognize subject matter jurisdiction in the District Court would do violence to the Fourteenth Amendment and the express will of Congress embodied in §1983 to effectuate the intent of that Amendment.

In *M. L. B. v. S. L. J.*, 519 U.S. 102, 116 (1996), this Court stated: "Choices about marriage, family life, and the upbringing of children are among associational rights [the Supreme] Court has ranked as 'of basic importance in our society,' . . .. **rights sheltered by the Fourteenth Amendment against the State's unwarranted usurpation, disregard, or disrespect.**" *M. L. B. v. S. L. J.*, 519 U.S. 102, 116 (1996) (internal citation omitted, emphasis added). What could be more disrespectful than

enforcement of a "challenge clause" and then denying an appeal of that determination.

Plainly, Petitioner here cannot repair to the Florida State Courts to assert her rights "sheltered by the Fourteenth Amendment" as her appeal has been dismissed. Hence, if her rights "**sheltered by the Fourteenth Amendment**" are to be more than rights without a remedy, access to federal court to protect those rights – as Petitioner sought in the District Court – must not be denied by the District Court asserting it does not have jurisdiction.

Petitioner's "independent" claim for federal protection of her federal rights is two-fold. First, that Florida may not enforce a "challenge clause" in a post-nuptial agreement as has been done here. The District Court is given explicit authority under 42 U.S.C. §1983 to make such a declaration upon Petitioner's challenge to that public policy of Florida. Indeed – and crucial to understand why *Rooker-Feldman* is not applicable here – Petitioner was asking the District Court to rule upon the constitutionality of Florida's "challenge clause" and its general use by the Florida Courts. This distinction was made clear in *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462 (1983), when the Supreme Court stated:

> The remaining allegations in the complaints, however, involve a general attack on the constitutionality of Rule 46 I(b)(3). See note 3, *supra*. **The respondents' claims that the rule is unconstitutional** because it creates an irrebuttable presumption that only graduates of accredited law schools are fit to practice law, discriminates against those who have obtained equivalent legal training by other means, and impermissibly delegates the District of Columbia Court of Appeals' power to regulate the bar to the American Bar Association, do not require review of a judicial decision in a

> particular case. **The District Court, therefore, has subject matter jurisdiction over these elements of the respondents' complaints.** (Emphasis added).

Feldman at 487.

As in *Feldman*, Petitioner was attacking the constitutionality of Florida's public policy to punish parents who seek the Florida Family Court's protection. Hence, this concurrent suit is expressly authorized by Congress. Finally, the order in question containing the affirmation of the "challenge clause" arose from the Florida Circuit Court, not, as required by §1257, the "highest court of the state". As such, the *Rooker-Feldman* doctrine does not apply to strip the District Court of jurisdiction expressly granted by Congress.

Second, Petitioner also sought a declaration from the District Court that the "Florida Fourth Circuit Court of Appeal may not refuse to hear an appeal challenging upon public policy grounds the fundamental, Federal and Florida Constitutional rights of a parent for disobedience of a trial court order." Again, as in *Feldman*, this is a "general attack on the constitutionality" of the Florida *judge-made* rule enunciated in *Gazil* that can deny appellate rights to an appellant in violation of federal and Florida State guarantees of those rights. Thus, jurisdiction in the District Court was not precluded to determine this fundamental question which in all events cannot be raised to the highest court of Florida.

Accordingly, the District Court had subject-matter jurisdiction to determine Petitioner's claims which the *Rooker-Feldman* doctrine cannot forestall.

II. THE *ROOKER-FELDMAN* DOCTRINE IMPROPERLY USURPS AUTHORITY FROM THE DISTRICT COURT

The premise of the so-called *Rooker-Feldman* doctrine is

that the Supreme Court "is vested, under 28 U. S. C. §1257, with jurisdiction over appeals from final state-court judgments. We have held that this grant of jurisdiction is exclusive". *Lance v. Dennis*, 126 S. Ct. 1198, 163 L. Ed. 2d 1059 (2006).

Petitioner challenges that determination of "exclusive" jurisdiction as §1257 simply states "Final judgments or decrees rendered by the highest court of a State in which a decision could be had, **may** be reviewed by the Supreme Court by writ of certiorari . . ." (Emphasis added). Nowhere does Congress employ the word "exclusively" reviewed by the Supreme Court. As such, to usurp jurisdiction from the district courts based upon this language is simply not supportable upon Supreme Court *dicta* alone. Moreover, when Congress has wants to vest exclusive jurisdiction, it has expressly so stated. *Cf.* 28 U.S.C.§1251.

What the people have given to the district courts through the Fourteenth Amendment – which Congress has confirmed by 42 U.S.C. §1983 – is the right to seek declaratory relief from district courts for state violations of the Fourteenth Amendment. Hence, simply because the state agency violating those rights is a court does not give it immunity from federal district court review. Indeed, in §1983 the express authority to issue declaratory decrees is stated.

Congress plainly has the authority to enforce the Fourteenth Amendment by appropriate legislation pursuant to §5 of that amendment which states, "The Congress shall have power to enforce, by appropriate legislation, the provisions of this article." *Accord*: *Monroe v. Pape*, 365 U.S. 167, 171 (1976).-Congress has done so by enacting 42 U.S.C. §1983, "Civil action for deprivation of rights", which states:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen

> of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, **except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable.** (Emphasis added.)

The emphasized portion of §1983 is significant for understanding why the abstention under *Rooker-Feldman* was error by the district court.

In enacting the emphasized portion the intention of Congress to vest jurisdiction in the district court to hear this sort of claim was made clear in the Report by the Senate Committee on the Judiciary on §311 of the Federal Courts Improvement Act of 1996, which amended §1983 as emphasized above:

> This section does not provide absolute immunity for judicial officers. Immunity is not granted for any conduct "clearly in excess" of a judge's jurisdiction, even if the act is taken in a judicial capacity. **Moreover, litigants may still seek declaratory relief, and may obtain injunctive relief if a declaratory decree is violated or is otherwise unavailable.** Section 311 restores the full scope of judicial immunity lost in *Pulliam* and will go far in eliminating frivolous and harassing lawsuits which threaten the independence and objective decision-making essential to the judicial process.

Senate Report, 104-366, page 37. (Emphasis added). Without

doubt, Congress in addressing this issue in the amendment of §1983 sought to insure the very procedure invoked by Petitioner: a declaratory judgment as a condition precedent to any injunctive action. That is all that Petitioner is seeking here. For the district court to hold that it does not have subject jurisdiction simply guts what the Fourteenth Amendment and Congress so clearly have sought to do: secure that federal district courts stand ready to protect those rights guaranteed to citizens under the Constitution from a state court's "unwarranted usurpation, disregard, or disrespect."

Thus to employ *Rooker-Feldman* to avoid that plainly placed jurisdiction and duty conflicts with the scheme Congress has so carefully laid out. As such, it cannot be so employed as such a result is expressly prohibited by the Rules Enabling Act, 28 U.S.C. §2072, which by its terms forbids any judicial-made rules to "abridge, enlarge, or modify" any substantive right. As this Court noted in *Sibbach v. Wilson*, 312 U.S. 1 (1941), the federal courts, in adopting rules, were not free to extend or restrict the jurisdiction conferred by a statute. *Id.*, at 10. Here, to employ the court-made rule of *Rooker-Feldman* would abridge Petitioner's right to seek redress in the federal court and thus is prohibited by §2072.

Finally, even if *Rooker-Feldman* is a valid doctrine, it is inapplicable here as Petitioner does not have the right to raise the issue in the state courts. Notably, the Eleventh Circuit completely ignored this issue when it held that "Mrs. Morris also had a reasonable opportunity to raise her federal constitutional claims in the state-court proceedings." *Appendix-12.* By action of the judge-made rule of *Gazil*, a Florida Family Court judge can – and in this case has – barred Petitioner from review of his orders in violation of a vested right to appeal.[3]

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[3] The Florida Supreme Court has recognized a state constitutional right to appeal in *Code of Judicial Conduct,* 838 So.2d 521, 522 (Fla. 2003): "We have recognized that the

III. PETITIONER DOES NOT SEEK APPELLATE REVIEW OF STATE COURT JUDGMENTS

In *Dennis*, this Court concluded: "Accordingly, under what has come to be known as the *Rooker-Feldman* doctrine, lower federal courts are precluded from exercising appellate jurisdiction over final state-court judgments."

Here, Petitioner was not asking the district court to exercise "appellate jurisdiction". Instead, Petitioner was seeking a declaration of her fundamental rights to access court and as a parent. Clearly, if the district court had issued a decree that Florida could not (i) deny Petitioner access to Florida's appellate courts and (ii) that fundamental parental rights preclude upon public policy grounds the enforcement of the "challenge" clause here, the Florida Courts would have to re-visit their decisions. However, this is precisely the sort of situation which this Court recognized does not preclude jurisdiction in the district court.

CONCLUSION

The implications of denying this petition are substantial. First, Florida has now recognized without benefit of appellate review, the constitutionality of a "challenge clause" provision that brutally punishes a parent for simply repairing to the only venue available to address intra-family issues – Florida Family Court. If that issue is properly considered, no right-thinking jurist could possibly conclude that such a clause – designed to financially enrich one parent at the expense of the best interest of children – could withstand fundamental and federal constitutional rights analysis.

Second, Florida's judicially-created *Gazil* rule – which has no legislative authority – acts to empower a family court

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Florida Constitution provides a constitutional right to appeal."

judge to enter orders which *de facto* preclude appeal of those orders. Such a system – particularly employed in the Family Law arena – simply offends the fundamental rights of parents recognized in *M. L. B. v. S. L. J.* and leaves parents without a remedy in Florida's Family and Appellate court systems.

Accordingly, this petition for a writ of certiorari must be granted so these fundamental and constitutional rights of parents and to access court can be recognized, protected and preserved against Florida's "unwarranted usurpation, disregard, or disrespect."

Respectfully submitted,

Montgomery Blair Sibley
Counsel for Petitioner

CONTENTS OF APPENDIX

Opinions Below

The June 1, 2006, order of dismissal of the United States District Court for the Southern District of Florida . . . . . *Appendix -2*

The November 16, 2006, order of the United States Circuit Court affirming the District Court's decision *Appendix-9*

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No.: 06-80452-Civ-Hurley

MERRY MORRIS,

Plaintiff,

vs.

ART WROBLE, solely in his capacity as a Judge of the Circuit Court of the 15th Judicial Circuit in and for Palm Beach County, Florida, and W. MATTHEW STEVENSON, solely in his capacity as Chief Judge of the Florida Fourth District Court of Appeal,

Defendants.

ORDER of FINAL DISMISSAL & CLOSE-OUT

THIS CAUSE is before the court upon defendant's motion to dismiss filed May 22,2006 [DE# 10]. After carefully reviewing the plaintiff's complaint and response in opposition to the motion, the court concludes that the *Rooker-Feldman* doctrine bars review of plaintiff's claims, and accordingly shall dismiss this suit.

Background

On May 5, 2006, plaintiff filed this declaratory judgment suit alleging that her constitutional rights[1] were abridged by a

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[1] Plaintiff alleges violation of her rights under the Article IV Privileges and Immunities Clause, First Amendment Petition

Florida state court judge's enforcement of a "challenge" clause contained in a post nuptial agreement to which she is a party, and a state appellate court's subsequent dismissal of her appeals from the resulting $1.5 million judgment entered against her in consequence of the challenge and related contempt orders.

The challenge clause in question, contained in a 1998 post nuptial agreement between plaintiff, Merry Morris ("former wife"), and Leland Morris ("former husband"), provides in part:

> In the event that ... after entry of judgment [former wife] challenges in court any provision in this agreement, the additional consideration paid to [former wife] by [former husband] to obtain this agreement .. .shall be forfeited by [former wife], and if already paid to [former wife], [former husband] shall retain all rights at law and equity to seek its return.

Pursuant to a 2001 amendment to the agreement, the value of the "additional consideration" paid by former husband increased from $1.35 million to $1.5 million dollars.

The parties divorced in August, 2001. Thereafter, in June, 2003, former wife moved to enforce and "supplement" the parties' post nuptial agreement, complaining that the former husband had violated the existing timesharing agreement, and that the existing schedule failed to address certain special occasions normally encompassed, such as birthdays, school holidays and Jewish holidays. The former husband counterclaimed, seeking forfeiture of the $1.5 million special consideration previously paid pursuant to the "challenge"

Clause, Fifth Amendment Due Process Clause, Fourteenth Amendment Equal Protection Clause, and Fourteenth Amendment Due Process Clause of the United States Constitution, as well as Article 1, 5 21 of the Florida Constitution. (Complaint, ¶¶ 29,32).

provision of the post nuptial agreement.

On September 13, 2004, the state court judge denied the former wife's motion to enforce and supplement the visitation schedule, and, agreeing that her efforts to modify the schedule mounted to a "challenge" to the post nuptial agreement which triggered a forfeiture, entered a $1,318,000.00 judgment against her. This judgment was later augmented to include a $264,000.00 attorney fee award in favor of former husband.

The former wife appealed to the Fourth District Court of Appeals, which, on March 21, 2005, dismissed the appeal based on her continuing failure to satisfy the alleged void money judgment and related contempt orders arising out of it. On April 13, 2006, the former wife's subsequent petition for writ of mandamus seeking reinstatement of the appeals was denied by the *Florida Supreme Court. Morris v Morris*, 2006 WL 950126, - So.2d (Fla. 2006).[2]

Approximately three weeks later, on May 5, 2006, former wife filed suit in this court seeking entry of a declaratory judgment establishing, first, that the state trial court is prohibited from enforcing a post nuptial "challenge" clause which "by its terms prohibits upon pain of forfeiture any access to court for child custody and visitation issues as violating fundamental, Federal and Florida Constitutional rights," and second, that the

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[2] Justice Anstead, joined by Justices Pariente and Quince, dissented, finding that "substantial questions exist as to the validity of the no-contest provisions of the post nuptial agreement and the forfeiture judgment and contempt proceedings based on the former wife's alleged violations of [those] provisions," while at the same time "no appellate review of the merits of her claims [has] been made or will be made" due to her failure to satisfy the allegedly void judgment and contempt sanctions arising out of it. *id.*, 2006 WL 950126 *2.

state appellate court "may not refuse to hear an appeal challenging upon public policy grounds the fundamental, Federal and Florida Constitutional rights of a parent."

Discussion

The *Rooker-Feldman* doctrine provides that federal courts, other than the United States Supreme Court, lack jurisdiction to adjudicate claims seeking review of state court judgments. *See District of Columbia Court of Appeals v Feldman*, 460 U.S. 462, 486 (1983); *Rooker v Fidelity Trust Co.*, 263 U.S. 413,415-1 6 (1 923). Because it is a jurisdictional doctrine, the court is obligated to consider whether *Rooker-Feldman* bars any of the plaintiff's claims before addressing the merits of the claims lodged. *See Long v Shorebank Dev. Corp.*, 182 F.3d 548,554-55 (7th Cir. 1999).

Rooker-Feldman applies not only to cases seeking direct review of state court judgments, but also to cases which are "inextricably intertwined" with a prior state court judgment. *See Powell v Powell*, 80 F.3d 464, 467 (11th Cir. 1996). A federal suit is so intertwined with an earlier state court judgment "if the federal claim succeeds only to the extent that the state court wrongly decided the issues before it." *Datz v Kilgore*, 51 F.3d 252 , 253 (11th Cir. 19951, citing *Pennzoil Co, v Texaco, Inc.*, 481 U.S. 1, 25, 107 S.Ct. 1519, 1533, 95 L.Ed.2d 1 (1987)(Marshall, J,, concurring). Put another way, if adjudication of a claim in federal court would require the court to determine that a state court judgment was erroneously entered or was void, the claim is inextricably intertwined with the merits of the state court judgment. *See e.g. Jordan v Democratic Party of Va.*, 122 F.3d 192, 202 (4th Cir. 1997).

In a more recent clarification of the doctrine, *Exxon Mobil Corp v Saudi Indus.* 544 U.S. 280, 1125 S. Ct. 1517, 161 L. Ed.2d 454(2005), the United States Supreme Court held that *Rooker-Feldman* is properly "confined to cases of the kind from which the doctrine acquired its name: cases brought by state

court losers complaining of injuries caused by state court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgment." *Id* at 125 S. Ct. at 1521-22.

In this case, the former wife is asking the court to declare that a state court judge wrongly enforced a "no contest" or "challenge" clause of the parties' post nuptial agreement which penalized her for seeking modification of the parties' visitation schedule, and that the final judgment of forfeiture which consequently entered against her on September 13, 2004 is void and unenforceable as violative of her rights under both the United States and Florida Constitutions.

Plainly, her petition for declaratory relief seeks review of a state court judgment which was "rendered before the district court proceedings commenced" in this case, thus preliminarily placing her claims squarely within the confines of *Rooker-Feldman* doctrine. From here, for *Rooker-Feldman* doctrine to bar this court's review of the plaintiff's claims, the following four criteria must be met:

> (1) the party in federal court is the same as the party in state court;
>
> (2) the prior state court ruling was a final or conclusive judgment on the merits;
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> (3) the party seeking relief in federal court had a reasonable opportunity to raise her federal claims in the state court proceedings; and
>
> (4) the issues before this court were either adjudicated by the state court or were inextricably intertwined with the state court's judgment.

See Mickens v. Tenth Judicial Circuit, District Court of Appeals, Second District, 2006 WL 1388735 (11th Cir. May 22,

2006)(unpub), citing *Amos v Glynn County Bd. of Tax Assessors*, 347 F.3d 1249, 1265 n. 11 (11th Cir. 2003).

By her current petition, former wife contends that her federal constitutional rights were violated in the state court proceedings, and she asserts jurisdiction in this court because she has exhausted her state appeals. However, the former wife had reasonable opportunity to raise her federal claims in the state court proceedings, and her current constitutional challenge to the results of those proceedings simply seeks to undo earlier state court decisions.

Former wife's federal case is thus essentially an impermissible appeal from a state court judgment rendered prior to the filing of this action, and the issues before this court are necessarily "inextricably intertwined" with the issues previously decided by the state court judgment, this court lacks jurisdiction to entertain it. *See e.g, Powell v Powell*, 80 F.3d 464 (11th Cir. 1996)(district court barred under *Rooker-Feldman* from exercising jurisdiction over action challenging state divorce court's final judgment applying Former Spouses Protection Act to retired sailor's military pension); *Blue Cross aud Blue Shield of Maryland, Inc. v Weiner*, 868 F.2d 1550 (11th Cir. 1989).[3]

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[3] See also *Gogola v Zingale*, 141 Fed. Appx. 839 (11th Cir. 2005)(unpub.)(ex-husband's challenge to constitutionality of Florida alimony statute held barred by *Rooker-Feldman* on ground it was inextricably intertwined with state court dissolution proceedings; by challenging constitutionality of statute, ex-husband was attempting to reverse state court orders regarding payment of alimony); *Tornheim v Eason*, 2006 WL 897865 (26 Cir. 2006)(unpub.); *Mitrano v Wursheli*, 150 Fed. Appx. 277 (4th Cir. 2005)(unpub); *Donahou v State of Oklahoma*, 253 Fed. Appx. 47 1 (10th Cir. 2005); *Partridge v State of Ohio*, 79 Fed. Appx. 844 (6th Cir. 2003)(unpub.). Compare *Loubser v Thacker*, 440F.3d 439 (7th Cir. 2006)(recognizing exception to *Rooker-Feldman* doctrine where

It is accordingly ORDERED AND ADJUDGED:

1. The defendant's motion to dismiss [DE# 10] is GRANTED and plaintiff's complaint is DISMISSED for lack of subject matter jurisdiction.[4]

2. The Clerk of the Court is ordered to CLOSE this case and terminate all other pending motions as MOOT

DONE AND SIGNED in Chambers at West Palm Beach, Florida, this 6th day of June, 2006.

/s/ Daniel T.K. Hurley
Daniel T.K. Hurley
United States District Judge

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litigant alleges corruption of state judicial process).

[4] Because the court concludes that subject matter jurisdiction is lacking under application of *Rooker-Feldman* doctrine, it is unnecessary to reach the defendants' alternative jurisdictional challenge based on the domestic relations exception to federal jurisdiction, see *Ankenbrandt ex rel. L. R. v Richards*, 504 U.S. 689 (1992), or the judicial immunity defense to plaintiff's claim for attorneys fees and costs asserted under 42 U.S.C. §1988.

In the United States Court of Appeals
For the Eleventh Circuit

DO NOT PUBLISH

NO. 06- 13809
Non-Argument Calendar
D. C. Docket No. 06-80452-CV-DTKH

MERRY MORRIS,

Plaintiff- Appellant,

versus

ART WROBLE, solely in his capacity as a Judge of the Circuit Court of the 15th Judicial Circuit in and for Palm Beach County, Florida, MATTHEW STEVENSON, solely in his capacity as Chief Judge of the Florida Fourth District Court of Appeal,

Defendants- Appellees.

Appeal from the United States District Court
for the Southern District of Florida
(November 16, 2006)

Before ANDERSON, BIRCH and HULL, Circuit Judges.

PER CURIAM:

In this divorce-related case, Merry Morris appeals the district court's order dismissing her complaint for lack of jurisdiction. The district court concluded that the *Rooker-Feldman* doctrine barred her complaint seeking declaratory relief under 42 U.S.C. 1983. After review, we affirm.

I. BACKGROUND

Merry Morris ("Mrs. Morris") signed a post-nuptial agreement ("the agreement") with her husband, Leland Morris ("Mr. Morris"). The agreement contained a no-challenge clause providing that if Mrs. Morris challenged in court any provision of the agreement, she would forfeit the $1.5 million paid in consideration by her husband. Mr. and Mrs. Morris then divorced in August 2001.

In June 2003, Mrs. Morris moved to enforce and modify the agreement in a Florida state court, claiming that Mr. Morris had violated the agreement and that the agreement did not address child custody arrangements for birthdays, school holidays, and Jewish holidays. Mr. Morris counterclaimed, seeking Mrs. Morris's forfeiture of the $1.5 million. After a three-day trial, the state court denied Mrs. Morris's motion to enforce and supplement the agreement, and awarded Mr. Morris the $1.5 million plus interest and attorney's fees. Mrs. Morris appealed the judgment to a Florida intermediary appellate court, the Fourth District Court of Appeal. On March 2 1,2005, the state appellate court dismissed her appeal based on her continuing failure to satisfy the money judgment and the related contempt orders arising out of it. In July 2005, Mrs. Morris petitioned the Florida Supreme Court for a writ of mandamus to reinstate her appeal. The Florida Supreme Court denied her petition on April 13, 2006.[1]

On May 5, 2006, Mrs. Morris filed the complaint here in federal district court against two Florida judges in their official capacities, pursuant to 42 U.S.C. §1983. Mrs. Morris sought declaratory judgment that: (1) a Florida state-court trial judge may not enforce a post-nuptial agreement that by its terms

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[1] On April 22, 2006, Mrs. Morris filed a petition for rehearing, which the Florida Supreme Court denied on June 15, 2006 – after she filed suit in federal district court.

prohibits upon pain of forfeiture any access to court for child custody and visitation issues as violating federal and Florida constitutional rights; and (2) the Florida Fourth District Court of Appeal may not refuse to hear an appeal challenging, on public policy grounds, the federal and Florida constitutional rights of a parent. The district court granted the defendant judges' motion to dismiss under the *Rooker-Feldman* doctrine.

Mrs. Morris timely appeals.[2]

II. DISCUSSION

The *Rooker-Feldman* doctrine limits the subject matter jurisdiction of the federal district courts. *See D.C. Court of Appeals v. Feldman*, 460 U.S. 462,476, 103 S. Ct. 1303, 1311 (1983); *Powell v. Powell*, 80 F.3d 464,466 (11th Cir. 1996). A federal district court does not have jurisdiction to review state-court decisions where: (1) the party in federal court is the same as the party in state court; (2) the prior state-court ruling was a final or conclusive judgment on the merits; (3) the party seeking relief in federal court had a reasonable opportunity to raise its federal claims in the state-court proceeding; and (4) the issue before the federal court was either adjudicated by the state court or was inextricably intertwined with the state court's judgment. *Amos v. Glym County Bd. of Tax Assessors*, 347 F.3d 1249, 1265 n. 11 (11th Cir. 2003). "A federal claim is inextricably intertwined with a state court judgment 'if the federal claim succeeds only to the extent that the state court wrongly decided the issues before it.'" *Siegel v. LePore*, 234 F.3d 1163, 1172 (11th Cir. 2000) (quoting *Pennzoil Co. v. Texaco,*

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[2] We review questions of subject matter jurisdiction *de novo*. *Brooks v. Ashcroft*, 283 F.3d 1268, 1272 (11th Cir. 2002). On appeal, Mrs. Morris also contends that the domestic relations exception to federal diversity jurisdiction does not apply. Because we decide that the district court lacked subject matter jurisdiction under the *Rooker-Feldman* doctrine, we do not reach this issue.

Inc., 48 1 U.S. 1,25, 107 S. Ct. 1519, 1533 (1987) (Marshall, J., concurring)).

In the present case, the plaintiff, Mrs. Morris, was a party in state court. Mrs. Morris obtained a final judgment from the highest state court in which review could be sought, because the state appellate court dismissed her appeal based on her contempt conduct and the Florida Supreme Court denied her mandamus petition that sought to compel the appellate court to hear her appeal.[3]

Mrs. Morris also had a reasonable opportunity to raise her federal constitutional claims in the state-court proceedings. For example, Mrs. Morris could have attacked, in the state trial court, the constitutionality of the no-challenge clause in response to her ex-husband's counterclaim for the $1.5 million. Likewise, in the state appellate court, Mrs. Morris could have raised her constitutional concerns about the $1.5 million judgment when she opposed Mr. Morris's motion to dismiss which was based on her failure to pay the $1.5 million.

Finally, the issue before the federal district court was "inextricably intertwined" with the state-court decision, because Mrs. Morris's claims succeed only to the extent that this Court determines that the state courts wrongly decided the issues. Mrs. Morris frames her request for declaratory judgment in general terms, but she is seeking relief specific to her situation. To grant Mrs. Morris the declaratory relief she seeks would mean that (1) the state trial court wrongly rendered the monetary judgment for

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[3] We reject Mrs. Morris's claim that the Florida state-court judgment was not final because she had a petition for rehearing pending before the Florida Supreme Court. Mrs. Morris's petition for rehearing addressed the Florida Supreme Court's denial of a petition for a writ of mandamus, not the state trial court's judgment against her or the state appellate court's dismissal of her appeal.

Mr. Morris pursuant to the no-challenge clause and (2) the state appellate court incorrectly dismissed Mrs. Morris's appeal of that judgment.

Mrs. Morris also contends that the Supreme Court's holding in *Lance v. Dennis*, - U.S. -9 126 S. Ct. 1198 (2006), interred the *Rooker-Feldman* doctrine and that the *Rooker-Feldman* doctrine no longer survives. We disagree. In *Lance*, the Supreme Court addressed the widespread conflation of the *Rooker-Feldman* doctrine with claim preclusion and held that the *Rooker-Feldman* doctrine "does not bar actions by nonparties to the earlier state-court judgment simply because, for purposes of preclusion law, they could be considered in privity with a party to the judgment." - U.S. at -7 126 S. Ct. at 1202. Lance did not inter the Rooker- Feldman doctrine.[4]

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[4] Further, in *Lance*, the Supreme Court stated that the *Rooker-Feldman* doctrine is limited to those circumstances, articulated in *Exxon Mobil*, where a party "seeks to take an appeal of an unfavorable state-court decision to a lower federal court." - U.S. a t , 126 S. Ct. at 1202 (citing *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 125 S. Ct. 1517 (2005)). In *Exxon-Mobil,* the Supreme Court stated that a federal plaintiff presenting an independent claim is not barred "simply because [he] attempts to litigate in federal court a matter previously litigated in state court." 544 U.S. at 293, 125 S. Ct. at 1527. We do not decide whether *Lance* or *Exxon Mobil* require us to modify in any way our above four-part Amos test, because Mrs. Morris's claims fail under either test. Mrs. Morris appears before us in the exact circumstances that *Exxon-Mobil* described the *Rooker-Feldman* doctrine applying: as a state-court loser filing suit in federal court after the state proceedings ended, complaining of an injury caused by that state-court judgment, and inviting a federal district court to review and reject it. 544 U.S. at 291-92, 125 S. Ct. at 1526.

III. CONCLUSION

For the foregoing reasons, we affirm the district court's dismissal for lack of subject matter jurisdiction.

AFFIRMED.